

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.33 OF 2006

WITH

CIVIL APPLICATION NO.2 OF 2006

Shri Imtiyaz Ahmed Shaukatali. ..Appellant.

V/s.

Union of India & Anr.

..Respondents.

Mr.P.M.Havnur for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 17, 2006.

P.C. :

1. Heard Mr.Havnur, counsel for the appellant.

None appears for the respondent though served.

2. This appeal arises from the order passed by the City Civil Court at Bombay dated 22nd December, 2005 in S.C.Suit St.No.5697 of 2005. By this order the trial court while directing the Suit to be numbered granted leave under section 80(2) of C.P.Code but declined to grant ad-interim relief as prayed by the appellant. No reason has been recorded by the trial court while passing that order, which is impugned before this court. The respondents produced sketch showing access of hutment at Bandra(East). Purpose of erecting wall outside the suit structure, it is stated, was in terms of directions given by the

Division Bench of this Court in PIL where the Railway gave undertaking that in order to prevent accidents, a boundary wall on both sides of the track wherever possible would be erected and existing walls be repaired.

3. Having perused the relevant documents which are produced by Mr. Thorat, it is not clear as to why the proposed wall in front of suit structure is required to be erected. Besides, if the plaintiff's contention is right, the suit structure will have no access left. Even this aspect requires consideration. For the time being, I am inclined to grant ad-interim protection to the appellant with the direction to the trial court to finally dispose of the Notice of Motion as expeditiously as possible, preferably within 8 weeks from the date of the receipt of the writ of this court. This direction is necessary as whether the proposed wall is necessary to be erected in terms of order of this Court in W.P. No. 2405 of 2001 with W.P.No.1048 of 2002 with W.P. No.1092 of 1995 will be one of the issue that will have to be considered. It will be appropriate that Notice of Motion is finally decided as early as possible. As notice of motion is pending before the lower court for hearing, instead of keeping the present appeal pending which is against the

ad-interim order the appeal is disposed of by directing the parties to maintain status quo as of today, which was granted by this court on 3rd January, 2006 till the final disposal of the Notice of Motion, which in turn will be disposed of within 8 weeks from the receipt of the writ of this court by the trial court or from the date on which the order passed by this court is brought to notice of the trial court by any of the parties to this proceedings.

4. Appeal as well as civil application disposed of on the above terms.